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December 30, 2016

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA FACSIMILE: (202) 219-3923

Re: MUR 7083; Ending Spending, Inc. Response to Complaint

Dear Mr. Jordan:

We are writing this letter on behalf of Ending Spending, Inc. ("ESI") in response to the later-withdrawn Complaint filed in the above-referenced matter by Danny Tarkanian, a former candidate for Congress in Nevada's Third Congressional District. The Complaint has no factual support and is based solely on speculation and innuendo with no legal theory of a violation of the Act to support them, even if the facts were true. The asserted facts on their face do not support a reason to believe finding in this matter, and the Complaint should be immediately dismissed.

As an initial matter, it should be noted that Mr. Tarkanian withdrew his complaint shortly after the Republican primary in a letter to the Office of General Counsel.¹ We note this not to suggest that a withdrawal letter necessarily has procedural or legal effect, but instead to underscore that the Complaint was filed solely for political purposes in the waning days of a close election, and even the Complainant Mr. Tarkanian now believes that it has no legal merit.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). *See* 11 CFR § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

¹ *See* Letter from Danny Tarkanian to Office of General Counsel, Jun. 17, 2016, attached as Exhibit A.

The Complaint erroneously alleges that ESI failed to disclose its donors on several 24-hour Form 5 independent expenditure reports covering independent expenditures ESI made opposing Mr. Tarkanian during Nevada's congressional Republican primary election in June. As addressed below, this accusation is unsupported by the law or facts.

Ending Spending, Inc.

ESI was created in 2010 as a Section 501(c)(4) social welfare organization that works to promote public policies that increase government transparency and accountability and promote fiscal discipline. It was initially incorporated under the name, "Taxpayers Against Earmarks, Inc." but changed its name in 2011 to Ending Spending, Inc. ESI was granted tax-exempt status under Section 501(c)(4) of the Internal Revenue Code on March 29, 2011.² As a recognized 501(c)(4) social welfare organization, ESI spends the vast majority of its resources advocating for public policies that are in line with its exempt purpose. However, ESI periodically expends smaller portions of its general treasury funds on political communications that advocate for or against political candidates. It is ESI's policy not to accept any earmarked contributions designated for a particular purpose, communication, or candidate.

The independent expenditures referenced in the Complaint were ESI television, radio, digital and telephone communications that opposed Mr. Tarkanian and supported his opponent in the Republican primary, Michael Roberson. ESI filed three Form 5 independent expenditure reports—on June 9th, 12th and 13th—which timely and accurately reflected payments for all of ESI's independent expenditures in the lead up to Nevada's Third Congressional District Republican primary.

Legal Analysis

The threshold question presented for the Commission is whether any evidence was presented in the complaint of individuals or other entities "earmarking" any contributions to ESI in a manner that would require ESI to report any individuals or other entities as "a person who made a contribution ... for the purpose of furthering an independent expenditure" pursuant to 52 U.S.C. § 30104(c)(2)(C), as interpreted by the Commission at 11 CFR § 109.10(e)(1)(vi).

The Commission's regulations provide that an independent expenditure report must include "[t]he identification of each person who made a contribution in excess of \$200 to the person filing such report, *which contribution was made for the purpose of furthering the reported independent expenditure.*" 11 CFR § 109.10(e)(1)(vi) (emphasis added). There is no question that, with respect to any independent expenditure report filed by ESI, no disclosure of any contributor is required unless the "*contribution was made for the purpose of furthering the reported independent expenditure.*" *Id.*

² A copy of ESI's Internal Revenue Service exemption letter is attached as Exhibit B.

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As stated above, it is ESI's longstanding policy not to accept any earmarked contributions designated for a particular purpose, communication, or candidate. All contributions to ESI are made to its general treasury fund and ESI has sole discretion in determining how it disperses its funds. Of course, the Commission is already aware of this fact because ESI made clear in its response to a September 15, 2016 Request for Additional Information that ESI "did not receive any contribution to further the independent expenditures disclosed on the [July Quarterly] report," and that, "[a]ccordingly, no contributors are disclosed on Line 7 and no amendment of the report is necessary."³ In this case, ESI was not required to list any contributors on its 24-hour Form 5 independent expenditure reports because no contributions were made by any individuals or entities or received by ESI for the purpose of furthering the reported independent expenditures.

Conclusion

In presenting later-withdrawn and factually and legally unsubstantiated arguments, Mr. Tarkanian has failed to demonstrate that ESI has violated any provision of the Act or the Commission's regulations. Instead, Mr. Tarkanian initially invoked an administrative process in an attempt to score political points in the lead up to his primary election. The Complaint was based on speculation and frivolous legal theories. We therefore respectfully request that the Commission join the Complainant in recognizing the legal and factual insufficiency of the Complaint on its face, and immediately dismissing it.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact us directly at (202) 772-0915 with any questions.

Respectfully submitted,



Charles R. Spies
James E. Tyrrell III

Counsel to Ending Spending, Inc.

³ Ending Spending, Inc., Form 99 Miscellaneous Report, filed Oct. 18, 2016, available at <http://docquery.fec.gov/pdf/632/201610189033035632/201610189033035632.pdf>.